



**UNITED STATES DEPARTMENT OF COMMERCE  
Patent and Trademark Office**

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SERIAL NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO.
09/124,391	09/23/93	MILLER	W NR103CIP

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31M1/0608

PIKE, A EXAMINER	
ART UNIT	PAPER NUMBER
3102	15

DATE MAILED:

06/08/95

Please find below a communication from the EXAMINER in charge of this application.

Commissioner of Patents.

# Office Action Summary

Application No.  
08/126,391

Applicant(s)  
Miller et al.

Examiner  
Andrew C. Pike

Group Art Unit  
3102



☐ This application has been examined. ☒ Responsive to communication filed on Apr 5 and May 8, 1995.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the date mailed of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Status of Claims

☒ Claim(s) 1-42 is/are pending in the application.

Of the above, claim(s) 20-35 and 39-41 is/are withdrawn from consideration.

☒ Claim(s) 10-19 is/are allowed.

☒ Claim(s) 36 and 42 is/are rejected.

☒ Claim(s) 1-9, 37, and 38 is/are objected to.

☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

## Status of Drawings

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☒ The drawing(s) filed on Sep 23, 1993 is/are objected to by the Examiner.

☒ The proposed drawing correction, filed on Apr 5, 1995 is ☒ approved ☐ disapproved.

## Status of Specification

☒ The specification is objected to by the Examiner.

## Status of Oath or Declaration

☐ The oath or declaration is objected to by the Examiner.

## Status of Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some ☐ None of the CERTIFIED copies of the priority documents have been  
☐ received.

☐ received in application no. (series code/serial number) \_\_\_\_\_.

☐ received by the International Bureau in PCT application no. \_\_\_\_\_.

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☐ Notice of References Cited, PTO-892 ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

☐ Interview Summary, PTO-413 ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

## Other

☐

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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*Election/Restriction*

1. Claims 20-35 and 39-41 are withdrawn from further consideration by the examiner, 37 C.F.R. § 1.142(b) as being drawn to nonelected inventions and species. Election was made **without** traverse in Paper No. 7.

*Allowable Claims*

2. Claims 10-19 are allowable over the prior art of record.

*Claim Rejections - 35 USC § 112*

3. Claim 42 is rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regards as the invention.

The following lack clear antecedent basis: claim 42: line 4, "said opening" (is this the "opening" of claim 1, line 11, the "opening" of claim 42, line 2, or some other "opening"?).

*Claim Objections*

4. Claims 1-9, 37, and 38 are objected to because of the following informalities:

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There should be a comma after "tube" in claim 4, line 17.  
The word "and" should follow the semicolon in claim 37, line 16.  
The word "and" in claim 37, line 23, should be deleted.

The following are initial recitations which are not so recited, or are subsequent recitations which are not uniquely and/or consistently recited: claim 1: line 15, "the top" (it should be "a top").

Appropriate correction is required.

*Claim Rejections - 35 USC § 102*

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claim 36 is rejected under 35 U.S.C. § 102(b) as being anticipated by Mulder.

Mulder clearly discloses all of the claimed features, including the pick-up tube being constructed of spaced inner and outer concentric tubes (see Fig. 4) and including a circularly annular vent hole at upper end 80. The box-shaped container thereof is shaped as a circularly cylindrical box.

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*Allowable Subject Matter*

7. Claims 1-9, 37, and 38 would be allowable if rewritten or amended to overcome the objection thereto.

8. Claim 42 would be allowable if rewritten or amended to overcome the rejection under 35 U.S.C. § 112.

9. As allowable subject matter has been indicated, Applicants' response must either comply with all formal requirements or specifically traverse each requirement not complied with. See 37 C.F.R. § 1.111(b) and section 707.07(a) of the M.P.E.P.

*Abstract*

10. The Abstract of the Disclosure is objected to because the word "container's" is misspelled as "containers" in line 7. The word "container's" is misspelled as "containers" in line 9. Correction is required. See M.P.E.P. § 608.01(b).

*Drawings*

11. The drawings are objected to under 37 C.F.R. § 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "or more" (claim 5, line 2) must be shown or the feature cancelled from the claim. No new matter should be entered.

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12. Applicants are required to submit a Proposed Drawing Correction in response to this Office Action. Any proposal by the Applicants for amendment of the drawings to cure defects must include:

a sketch in permanent ink in compliance with 37 C.F.R. § 1.123, showing changes in the filed drawings in *red ink* in accordance with M.P.E.P. § 608.02(v), or showing Proposed Substitute Drawings or Proposed Additional Drawings in black ink.

This proposal should be a *separate* letter, *i.e.*, drawings with a cover letter with an appropriate heading, *e.g.*, "Proposed Drawing Correction", in compliance with 37 C.F.R. § 1.123.

IMPORTANT NOTE: The filing of new formal drawings to correct the noted defect may be deferred until the application is allowed by the examiner, but the sketch in permanent ink of the Proposed Drawing Correction is required in response to this Office Action, and *may not be deferred*.

#### *Response to Amendment*

13. Receipt of the supplemental oath or declaration filed May 8, 1995, is acknowledged.

14. The proposed drawing correction filed on April 5, 1995, has been approved.

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15. Applicants' amendment filed April 5, 1995, to claim 1 and claims dependent thereupon has overcome the rejections under 35 U.S.C. §§ 102, and 103, which are not maintained.

16. Applicants' arguments filed April 5, 1995, with respect to claim 36 have been fully considered but they are not deemed to be persuasive.

Applicants argue that Mulder fails to disclose "vent hole", in that the outer tube thereof is completely open at the top. However, the outer tube is not completely open at the upper end 80, but is partially closed off by the inner tube. The circularly annular opening defined between the inner and outer tubes at the upper end 80 reads upon the "vent hole" as claimed.

#### *Conclusion*

17. Applicant's amendment necessitated the new grounds of rejection. Accordingly, **THIS ACTION IS MADE FINAL**. See M.P.E.P. § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 C.F.R. § 1.136(a).

A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 C.F.R. § 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE

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STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION.

18. This application contains claims 20-35 and 39-41 drawn to an invention non-elected with traverse in Paper No. 7. A complete response to the final rejection should include cancellation of non-elected claims or other appropriate action (37 C.F.R.

§ 1.144) M.P.E.P. § 821.01.

19. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Andrew Pike whose telephone number is (703) 308-3423.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-1113.

Correspondence related to this application may be transmitted by facsimile in accordance with 37 C.F.R. § 1.6, except for that correspondence for which facsimile transmission is prohibited under 37 C.F.R. § 1.6(d). Facsimile copies of an original signature under 37 C.F.R. § 1.4(d)(2) on correspondence transmitted by facsimile under 37 C.F.R. § 1.6 are acceptable. Applicant should retain the original correspondence papers as evidence of authenticity. If a question of authenticity arises, the Office may require submission of the original correspondence papers; BUT APPLICANT SHOULD **NOT** SUBMIT THE ORIGINAL CORRESPONDENCE PAPERS IN ADDITION TO THAT TRANSMITTED BY FACSIMILE unless specifically required to by the Office. The Group 3100 Fax Center facsimile number is (703) 305-7687.

*Andrew C. Pike*  
6-7-1995  
ANDREW C. PIKE  
PATENT EXAMINER  
ART UNIT 3102

acp  
June 7, 1995